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Forty-first session

SUMMARY RECORD OF THE 1039th MEETING

Held at Headquarters, New York,
on Tuesday, 26 March 1991, at 10 a.m.

Chairman: Mr. POCAR

later: Mr. DIMITRIJEVIĆ (Vice-Chairman)

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The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Second periodic report of India (CCPR/C/37/Add.13)

1. At the invitation of the Chairman, Mr. Ramaswamy (India) took a place at the Committee table.

2. Mr. RAMASWAMY (India), introducing the second report of India (CCPR/C/37/Add.13), said that modern-day India had a tolerant, eclectic society where people of many different faiths and persuasions had joined together to build the world's largest democracy, in which universally recognized human rights and fundamental freedoms were guaranteed to all. The Indian Constitution, which had entered into force on 26 January 1950, derived its basic inspiration from India's history and from other constitutional systems. The Constitution expressly prohibited discrimination on the grounds of religion, race, caste, sex or place of birth, and it prohibited the State from denying any person equality before the law or equal protection under the law within the territory of India. The Constitution contained special provisions which favoured the backward sectors of Indian society, specifically the scheduled castes and scheduled tribes, and women and children.

3. India was a secular and democratic republic where freedom of thought, expression, belief, faith and worship were guaranteed to all citizens. Freedom of religion was one of the fundamental rights guaranteed by the Constitution. The customary and codified personal laws of people of different religions, beliefs and faiths were fully guaranteed and protected. In India, every religious denomination had the right to establish and maintain institutions for religious or charitable purposes, to manage its own affairs in matters of religion, to own and acquire movable and immovable property and to administer such property in accordance with the law. Secularism was the very foundation of Indian democracy and the basis of India's unity in diversity.

4. The Constitution provided for parliamentary democracy with division of powers among the legislature, the executive and the judiciary. The Constitution established a union of states with a federal structure. The legislatures, both at the central level and in the states, consisted of directly elected representatives of the people. There was universal adult franchise, which ensured popular participation in political processes at all levels. The right of political association and activity was guaranteed. The executive was also accountable to the people through the legislature.

5. The rule of law was the very core of the Indian Constitution and legal system. The constitutionality of legislation in India was subject to review by the courts, and the exercise of executive power was subject to different forms of judicial review. The judiciary in India was independent at all levels.

(Mr. Ramaswamy, India)

6. There had been a number of important developments since India had submitted its initial report in 1984. A new state of Mizoram had come into existence subsequent to the enactment of the State of Mizoram Act of 1986. Also, the former Union Territory of Arunachal Pradesh had been granted statehood on 20 February 1987. Goa had become a full-fledged state on 30 May 1987, and Daman and Diu had been retained as a Union Territory. The Constitution (Fifty-ninth Amendment) Act of 1988 was no longer in force. Under the Constitution (Sixty-third Amendment) Act of 1989, the proviso to article 356 (5), and article 359 A, of the Constitution had been omitted; thus, the pre-1988 situation had been restored.

7. In 1987, the Parliament had passed the Legal Service Authorities Act (Act 39 of 1987), which provided for legal aid on a statutory basis, and for the establishment of legal service authorities at central, state and district levels. The Parliament had passed the Religious Institutions (Prevention of Misuse) Act of 1988 (Act 41 of 1988), which sought to prevent the misuse of religious institutions for political and other purposes. The Representation of the People Act had been amended, reducing the voting age from 21 to 18 years in order to give effect to the Constitution (Sixty-first Amendment) Act of 1988.

8. Since the Human Rights Committee's consideration of India's initial report in 1984, several elections had been held in India. General elections to the Ninth Lok Sabha had been held on 22, 24 and 26 November 1989. Simultaneous elections had been held to the legislative assemblies of Andhra Pradesh, Goa, Karnataka, Sikkim and Uttar Pradesh.

9. In connection with the adjudication of disputes relating to recruitment and conditions of service of persons appointed to public services and posts, the parliament had passed the Administrative Tribunals Act of 1985. Pursuant to that Act, the Union Government had set up the Central Administrative Tribunal in 1985, whose purpose was to provide speedy and inexpensive justice to central government employees. The Tribunal had regular branches in the states, and some of the states had also set up tribunals for state government employees.

10. The Parliament had passed the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 (Act 33 of 1989), which was aimed at providing further protection to the vulnerable sectors of Indian society. The Act defined the term "atrocity" and provided punishment for the commission of atrocities. The states were also obliged to provide adequate relief assistance to rehabilitate persons belonging to scheduled castes and scheduled tribes in such situations. The Act also provided for the establishment of special courts to try such offences.

11. India's popular democracy promoted healthy public opinion. The free press, the All-India Radio and the independent judiciary were the most important vehicles for stimulating public opinion and creating an atmosphere in which human rights could be observed and protected. The Indian press was a reliable ally in the pursuit of truth and the guarantee of civil and political rights to all in India.

(Mr. Ramaswamy, India)

12. The Supreme Court of India, and the High Courts in the individual states, ensured the effective implementation of human rights in India through the liberalized review of administrative action. Such liberalization had led to the growth of public interest litigation, the provision of compulsory legal aid to the needy, and the seizure of court jurisdiction in such matters even on the basis of postcards or telegrams received from individuals or of stories or reports published in magazines or newspapers. Moreover, in the exercise of jurisdiction in such matters, strict adherence to locus standi was in large measure dispensed with, and the courts could be pressed into action either at the instance of a member of the public or, suo motu, by the court. Certain public interest ligitant groups and individuals approached the judiciary for appropriate remedies in their specific and particular areas of interest in the field of human rights. Broadly, there were groups dealing with such issues as police brutality, women's rights, pollution control and other environmental factors, the rights of the poor, prison conditions, bonded labour, child abuse and sometimes even government policies affecting human rights. In general, the Indian judiciary seemed to be more lenient towards such litigants and litigant groups as compared with the claims of private individuals based on the principles of cause of action and locus standi.

13. The Indian judiciary had made an immense contribution to the safeguarding of other major areas of human rights, including the right to life and personal liberty, freedom of expression and speech, and the protection of minorities and minority institutions. The philosophy of the death penalty had been radically transformed. While the Supreme Court had upheld the legality of the death penalty under the Indian Constitution, it had indicated that the death penalty should be used as an exception in extremely rare cases, and even then only as a deterrent. The right to liberty had also been interpreted as covering several aspects of an individual's activities, ranging from reputation to character to involuntary disappearances. Perhaps it was only in India that freedom of expression and speech were interpreted to include access to, and the price of, newsprint. In that connection, the levy of customs duties had been examined in order to assess whether such duties constituted a reasonable restriction of freedom of speech and expression. Minorities and minority institutions in India, which covered such aspects as education, public employment and preservation of minority languages, cultures and traditions, were protected by the judiciary.

Constitutional and legal framework within which the Covenant is implemented (article 2 (2) and (3) of the Covenant) (section I of the list of issues)

14. The CHAIRMAN read out section I of the list of issues concerning the second periodic report of India, namely: (a) the status of the Covenant within the Indian legal system and the resolution of possible contradictions between domestic legislation and the Covenant; (b) any cases during the period under review where the provisions of the Covenant had been directly invoked before the courts or referred to in court decisions or where a law had been disregarded by a court on the grounds that it was contrary to the Covenant; (c) measures which had been taken since the consideration of India's initial report to disseminate information on the rights recognized in the Covenant, particularly among the various minority communities in their own languages; and (d) factors and difficulties affecting the

(The Chairman)

implementation of the Covenant, particularly the impact of the size of India's population and its culture and traditions on the implementation of the human rights contained in the Covenant.

15. Mr. RAMASWAMY (India) said, with respect to section I (a) of the list of issues, that in his country the rules of international law were incorporated into national law and considered to be part of it unless they were in conflict with an Act of Parliament; national courts were under an obligation, within reasonable limits, to interpret national law so as to avoid confrontation with the community of nations or the well-established principles of international law. In 1990 the Supreme Court of India had observed that in the event of doubt the national rule was to be interpreted in accordance with the international obligations of the State. The rights included in the Covenant had already found their place in the Indian Constitution and other laws, and so the question of contradictions between Indian legislation and the Covenant was purely hypothetical. No such contradictions had been encountered, and in the period under review Indian courts had not been required to adjudicate any case arising from such contradictions; had they been required to do so, they would have attempted to achieve an interpretation reconciling international law and national legislation.

16. With respect to section I (b), there had been cases during the period under review where the provisions of the Covenant had either been invoked before the courts by the parties or referred to suo moto by the courts themselves, and the general trend had been to base the claims on the rights of individuals as provided for in national legislation and to supplement the Covenant and its provisions in the assertion of those claims. For the most part, such claims had involved fundamental human rights and had been raised before the High Courts of the states or before the Supreme Court of India. To his knowledge there had not been any case where provisions of the Covenant had been invoked and disregarded by the courts.

17. With respect to section I (c), information on the rights recognized under the Covenant had been widely disseminated, and the citizens of India were well-acquainted with the basic human rights and fundamental freedoms embodied in it. In the event of alleged infringement of those rights, the public had ready access to the courts, of which there was an adequate number, and to qualified lawyers, numbering more than 650,000, who were intimately acquainted with the human rights and fundamental freedoms recognized in the Covenant.

18. There was a broadly based awareness of human rights in general and of political and civil rights in particular as a result of the efforts of the Government of India and its information agencies, and of radio and television programmes in all the country's languages. Much was done by the press, and discussions, seminars and symposia were held in a number of public forums; the voluntary agencies also played an important role in campaigning for implementation of civil and political rights, especially those relating to the right to life and the right to personal liberty. The Covenant, and other international instruments on human rights, had been translated into several Indian languages, and human rights, in the broadest sense, formed part of the curriculum and syllabus for children in school.

19. Mr. ANDO thanked the Indian delegation for its concise report which had sought to deal with a number of the questions raised during consideration of its initial report. With regard to the new jurisdiction, described as epistolary jurisdiction, which, according to paragraph 6 of the report, was in the process of evolution in India as a result of public interest litigation set in motion in the Supreme Court and some of the High Courts, he sought further elaboration of how it was institutionalized and made use of. As for human rights awareness and education, he asked whether the Covenant had been translated into India's minority languages, and how much human rights education had been undertaken among law enforcement officers, especially those in the police and the army who might be operating in emergency situations, in which human rights were most at risk. He was concerned to know how they were constrained, and to what extent their activities were monitored.

20. Mr. LALLAH said that compliance with the provisions of articles 2 (1), 2 (3)(a), 4 and 26 of the Covenant gave him particular cause for concern. In particular, he was worried about a series of laws that had been passed in India relating to terrorism, notably the Armed Forces (Special Powers) Act, which was applicable to various parts of the territory of India, especially the north-east, and which was apparently being extended to other parts of the country. It was his impression that the Act was a special kind of legislation which short-circuited the various guarantees laid down in the Code of Criminal Procedure, and possibly even short-circuited the guarantees to be found in the Indian Constitution itself; he wondered to what extent it was consistent with the obligations undertaken under the Covenant, especially article 4. The Armed Forces (Special Powers) Act enabled the army to supplement the inadequacies of the civilian authorities not only in the pre-trial stage but also in respect of powers of arrest and search. He asked to what extent the Act was in compliance with the obligations undertaken under the Covenant to bring a person to trial with the least possible delay and to provide guarantees for people's physical integrity.

21. He wished to know whether there were remedies in the event of officials committing transgressions. Section 4 of the Act enabled the military authorities to shoot, arrest, search and seize, and he was concerned to know whether the criminal procedure applied with respect to the minimum use of force, and the various guarantees, for example, with respect to the searching of women and the possibility of their suffering violations to their dignity and physical integrity, the limitation as to the time after which the military authorities were obliged to hand an arrested person over to the civilian authorities, and whether the investigation was carried out by military or civilian personnel.

22. There was an article in the Indian Constitution which guaranteed protection against arrest and detention in certain cases, and those guarantees raised a number of questions. The north-east of India was an area where there was not ready access to lawyers, and in a situation in which it had become necessary for the State to rely on non-civilian authorities to assist in the establishment of order, he suggested that steps should be taken to ensure that those military authorities effectively came under civilian control, and that people who ran a risk of suffering transgressions committed by the non-civilian authorities had ready access to redress.

(Mr. Lallah)

23. It was his understanding that the Armed Forces (Special Powers) Act had been the subject of constitutional action in 1983, and if that was so he would welcome information on the progress and outcome of that action.

24. Ms. CHANET sought clarification of the reservations which the Government of India had made upon accession to the Covenant, which amounted to restrictions with respect to a number of its articles and the possibility of whole sections of the Covenant not being applied, in particular the reservation referring to article 22 of the Indian Constitution regarding administrative detention, which permitted exclusion of the rights envisaged under article 9 of the Covenant. The Government of India had also made a reservation to article 13 of the Covenant, arguing that it reserved the right to apply its own legislation in respect of aliens. She asked why the Government of India had considered it useful to make a statement in respect of freedom of expression and assembly and the freedom to demonstrate, according to which all those freedoms were subject to possible restrictions which probably went beyond what was envisaged by the relevant articles of the Covenant.

25. She would welcome information as to whether the Government intended to accede to the Optional Protocol to the Covenant, permitting the Committee to receive and consider communications from individuals.

26. With reference to paragraph 6 of the report, she sought information concerning the rules which applied to the appointment, recruitment and advancement of magistrates, and any disciplinary sanctions to which they might be subject. She also wondered if there were circumstances in which they could be dismissed from office.

27. Mr. Dimitrijević (Vice-Chairman) took the Chair.

28. Mr. EL-SHAFEI asked how the new "epistolary jurisdiction" described in paragraph 6 of the report had been established, and how it was to be reconciled with the Armed Forces (Special Powers) Act, certain provisions of which did not permit legal recourse, particularly when acts were committed by military authorities or in certain states.

29. While it was understandable that Governments faced with the spectre of terrorism should take measures to protect the victims, he would appreciate more details on the meaning of the statement in the report that "these factors were exacerbated by chronic instability in the regional situation and growing external intervention in India's neighbourhood", and on the way in which the commitment of the Government of India to the protection of human rights had been negatively affected by that situation.

30. Lastly, he requested that the right of clarification of India's reservation to article 1 of the Covenant and asked what India's position would be on the question of areas disputed between sovereign Governments.

31. Mr. SERRANO CALDERA requested information on how the so-called epistolary jurisdiction had contributed to a new jurisprudence in the area of human rights and on the impact which the Armed Forces (Special Powers) Act had had on the constitutional framework for the protection of human rights.

32. Clarification was needed concerning the status of the Covenant under Indian law. From the report it appeared that the Covenant was supreme in the constitutional sphere while it appeared to be secondary to other legislative and executive provisions. He wished to know specifically whether the Covenant could be invoked in India to challenge the constitutionality of a law.

33. Mr. MYULLERSON said that India took its human rights responsibilities seriously, and notwithstanding the many difficulties which arose from its multicultural and multi-ethnic character it had made great efforts in the area. Referring to India's reservations to article 1 of the Covenant, whereby the Indian Government held that the right to self-determination applied only to peoples under foreign domination, he wondered what India's view was with regard to multinational or multi-ethnic States.

34. Mr. PRADO VALLEJO commended India's efforts to adopt legislation for the protection of human rights, but noted that problems occurred in India as they did elsewhere. What mattered was not just the human rights legislation theoretically in force but human rights practice also. There appeared sometimes to be a discrepancy between the sound human rights laws which India had enacted and the practical application of those laws.

35. Some questions asked during the Committee's consideration of India's initial report remained unanswered. It was not clear, for example, whether there were incompatibilities between the Covenant and the laws on human rights adopted by the Indian parliament.

36. There were problems of violence in India, affecting many areas of life. He wished to know what had been done to overcome the situations which had occasioned violence in the past. While there were sound laws in force in line with article 14 of the Covenant, at the same time the facts showed that in practice members of the police and the security forces committing human rights violations were never brought to trial, because to do so was not deemed to be in the public interest. Details should be provided on any efforts that were being made to ensure that legislation was effective in preserving respect for fundamental human rights.

37. Mr. FODOR found the information given with reference to certain articles of the Covenant to be rather thin. India had a detailed Constitution, on which the report had principally concentrated, but he would have appreciated it if more light had been shed on the secondary legislation relating to certain articles of the Covenant. With respect to section I, he referred to the statement in paragraph 6 of the report to the effect that even the Supreme Court could be pressed into action to provide immediate relief in the very first instance. In that connection, he wished to know whether, in the case of infringement of fundamental rights, the individual had the option of turning either to the local courts or to the Supreme

(Mr. Fodor)

Court directly. If the latter option existed, he wished to know its advantages or disadvantages, and in particular, if the Supreme Court exercised primary jurisdiction in a case, how that affected the right to appeal. Furthermore, he would be interested to know whether the High Courts and the Supreme Court were more readily trusted by the population than the local courts. Given that India was a society of many religions and ethnic groups, he wondered whether allegations of bias in the local courts were commonplace. He, too, sought more detailed explanations of the features of the new epistolary jurisdiction and the reasons that had necessitated its establishment.

38. Mrs. HIGGINS said that while from a common-law point of view she understood the theory behind the statement that the guarantees required by the Covenant were all present in existing Indian law, she was somewhat puzzled as to the practical application, given the reservations expressed, which suggested that the Covenant was to be interpreted in line with Indian law, rather than the other way round. She would appreciate a comment on that point.

39. She agreed with Mr. Lallah that the National Security (Amendment) Act and the Terrorist and Disruptive Activities (Prevention) Act entailed derogations from rights under the Covenant. Although occasioned by an emergency, those acts had not been proclaimed as emergency legislation. She wished to know why that was so, and why they had not been notified as derogations from the Covenant, as required by the Covenant itself. She noted, moreover, that no time-limit had been specified for some of the provisions. As the Covenant seemed to be subordinate to the Indian Constitution and there were derogations from it, some of them without time-limit, covering wide areas of Indian territory, she would appreciate a statement on how the Covenant could be said to apply in India.

40. Mr. AGUILAR, referring to paragraph 6 of the report, asked whether the Supreme Court was empowered to act in first instance on human rights violations routinely, or only in certain cases; and whether there were other courts of first instance whose rulings could be appealed to the Supreme Court. He would also like more information on the scope of the so-called epistolary jurisdiction, and how such legislation protected the large numbers of people who were illiterate.

41. Although the Committee had been assured that the Covenant had the force of law in India, especially since the landmark Supreme Court ruling of 1990, he agreed with Mrs. Higgins that India's reservations to the Covenant implied the reverse - that the Covenant was to be interpreted in accordance with the national laws.

42. He, too, was concerned that certain laws abrogating rights - such as the Armed Forces (Special Powers) Act and the Terrorist and Disruptive Activities (Prevention) Act - in effect established a continuing state of emergency, but had not been proclaimed as emergency legislation in accordance with articles 43 and 4 of the Covenant and were not subject to any time-limit. The Armed Forces (Special Powers) Act, in particular, had been in effect for 33 years. Moreover, like other similar legislation, it gave public officials an immunity from prosecution that ran counter to the Covenant.

(Mr. Aguilar)

43. Despite India's position, expressed in its reservation to article 1 of the Covenant (para. 11 of the report), that the right to self-determination applied only in a context of foreign domination, he believed that there was room for the democratic principle of autonomy even within a nation made up of separate states. He also wondered whether the Indian Government was giving some thought to withdrawing its other reservations to the Covenant, particularly in view of the 1990 Supreme Court ruling.

44. Mr. WENNERGREN said that he wondered whether India's position that adherence to self-determination was coexistent with the principle of sovereign equality (para. 10 of the report) was in fact tenable in the case, for instance, of the admission of a new state into the Union. There seemed to be no legal provision for such a state, once admitted, to leave the Union, and that element of compulsion seemed to be incompatible with democracy and sovereign equality. He would appreciate a fuller legal and philosophical explanation of the Indian Government's reconciliation of the two concepts. Also, it was not clear to him what constituted the "essence of national integrity" referred to in India's reservation to article 1 of the Covenant (para. 11 of the report). He found it difficult to understand, moreover, how the question of the validity of the Armed Forces (Special Powers) Act of 1958, whose provisions were clearly unconstitutional, could have been pending so long before a constitutional court.

45. Mr. SADI said that his chief concern was that, while India was certainly a lively democracy and while the Indian Government gave its absolute assurance that all the principles of the Covenant had been reflected in its laws, it had none the less entered so many reservations to the Covenant. Like Mrs. Higgins, he was still unsure of the actual status of the Covenant vis-à-vis the legislation of India, and he asked the representative to tell the Committee in clear terms.

46. It would be interesting to know if the Indian people at large were aware of their Government's ratification of the Covenant. Had there been any campaign to educate at least the legal profession on how the Covenant applied in India? The benefits of the Covenant could be lost for lack of knowledge.

47. Mr. RAMASWAMY (India), in response to the various questions about the legal and constitutional status of the Covenant in India, cited the well-known principle that under no circumstances did international law ever confer any rights upon the people of any country; international law being, in a sense, a voluntary agreement among nations to respect each other's laws in the interaction of human beings. Thus, article 51 of the Indian Constitution, which provided that the State should endeavour to promote international peace and security, maintain just and honourable international relations between nations, foster respect for international law and treaty obligations in the dealings of organized peoples with one another, and encourage settlement of international disputes by arbitration, was what was termed a directive principle of State policy, providing guidance for the executive and the legislature but not enforceable in the courts.

(Mr. Ramaswamy, India)

48. The Indian Constitution, unlike the British Constitution but like that of the United States, was written, and provided for a division of powers among the legislative, executive and judicial branches of government. Consequently, no rights existed in India other than those that were guaranteed in the Constitution, since all rights had been codified in the Constitution or in laws enacted under the Constitution. The Indian Constitution consisted of legislative entries dividing the topics of legislation between the states and the central Government, including a concurrent list containing issues on which both states and central Government could legislate. All topics of legislation must come under a legislative entry and all laws must be sanctioned by a legislative entry, although the parliament had a residuary power of legislation on all topics not covered by the legislative entries in the Constitution.

49. Consequently, the question of the Covenant having legal status did not arise in India. A citizen could, for instance, claim that his rights had been violated, but only on the basis of a particular law, not on the basis of an article of the Covenant. Similarly, the constitutionality of a law could be challenged on the ground that it violated a right guaranteed under the Constitution, but not a right set out in the Covenant. When a court examined challenges on the basis of a right guaranteed by the Constitution but restricted or denied by an ambiguous law, the court could overrule the law and interpret the right in question as including the full guarantees under the Covenant. If a right was not guaranteed in the Indian Constitution, nothing could be done. However, as Attorney General of India, fully familiar with the Constitution and the laws of his country, he could personally vouch for the fact that every aspect of every right guaranteed under the Covenant was guaranteed in India either in the Constitution or in a specific enactment.

The meeting rose at 1 p.m.